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van der Aa, S.

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Stalking as a form of (domestic) violence against women: two of a kind?

Suzan van der Aa Ph.D

Keywords: stalking • domestic violence • violence against women • gender • protection orders

Abstract

Stalking is often interpreted within the framework of violence against women or domestic violence. Contrary to research on domestic violence, the gender-specificity or the domestic violence context of stalking has received only little attention. Overwhelming empirical evidence suggests that stalking 'disproportionally affects women' in the sense that women run a higher risk of falling victim to stalking. Some studies also attribute more severe consequences to female victimization of stalking. There is furthermore evidence that a former (violent) relationship increases the risk of stalking victimization and that a prior romantic involvement has an influence on the seriousness and duration of the stalking. As a result, stalking can be considered a form of (domestic) violence against women.

Although the violence against women and the domestic violence paradigms were once very useful in generating attention for the problem of stalking, and although empirical evidence suggests that these perspectives remain useful to date, the fact that stalking is a heterogeneous phenomenon, affecting male and female, intimate and non-intimate victims, should always be kept in mind. Legislation which explicitly (e.g., by reserving protection orders to victims of ex-intimate stalking) or inadvertently (e.g., by using a fear-requirement or by including gender-specific stalking tactics) excludes certain offenders or victims, as is the case in some EU Member States and – depending on the interpretation of 'gendered understanding' – the CoE Convention on Combating Violence against Women and Domestic Violence, should be avoided.

Parole chiave

Riassunto

Nonostante lo stalking venga spesso interpretato come un aspetto della violenza domestica o contro le donne, la sua specificità di genere o il suo legame con le precedenti forme di violenza non sono stati adeguatamente approfonditi.

Da un punto di vista empirico è ovvio che gli atti persecutori "colpiscono in maniera sproporzionata le donne", nel senso che i soggetti di sesso femminile sono maggiormente a rischio di divenire vittime, così come secondo alcuni studi subirebbero conseguenze più importanti. La vittimizzazione delle stesse sarebbe inoltre influenzata dalla presenza di una precedente (violenta) relazione, mentre la gravità e la durata della campagna persecutoria dipenderebbero dall'esistenza di un precedente legame romantico tra autore e vittima. Sulla base, quindi, delle precedenti osservazioni, lo stalking può essere considerato una forma di violenza (domestica) contro le donne.

Anche se i paradigmi della violenza domestica hanno contribuito in maniera efficace all'aumento dell'attenzione verso i fenomeni persecutori, tuttavia è importante non dimenticare che lo stalking è un fenomeno eterogeneo, che coinvolge sia maschi che femmine, (ex)partner e non. Una normativa che esplicitamente (ad esempio, riservando gli ordini di protezione alle vittime di uno stalker ex-partner) o involontariamente (per esempio, utilizzando il requisito della paura o includendo le tattiche di stalking legate al genere) esclude alcuni autori o vittime, come avviene in alcuni gli Stati membri dell'UE e – secondo il concetto di 'valutazione di genere' – nel caso della Convenzione del Consiglio d'Europa per combattere la violenza contro le donne e la violenza domestica, andrebbe evitata.

Per corrispondenza: SUZAN VAN DER AA PH.D, Assistant professor at the International Victimology Institute Tilburg (INTERVICT), Address: Tilburg University, Warandelaan 2, 5000 LE, Tilburg, the Netherlands Telephone number: 0031-13-4663504 e-mail • S.vdrAa@tilburguniversity.edu

Cyberstalking e molestie portate con strumenti elettronici: aspetti informatico-giuridici

1. Introduction

Stalking or the 'persistent harassment in which one person repeatedly imposes on another unwanted communications and/or contacts' (Mullen, Pathé & Purcell, 2001) is a pervasive problem. Prevalence estimates range from 4.5% to 23.4% of the population being affected (Van der Aa, 2010, p. 52-55) and its impact on victims' psychological, social and occupational functioning can be devastating (e.g., Budd & Mattinson, 2000; Tjaden & Thoennes, 1998; Pathé & Mullen, 1997; Kamphuis & Emmelkamp, 2001; Blaauw, Winkel, Arensman, Sheridan & Roberts, 2002; Dressing, Keuhner & Gass, 2007; Purcell, Pathé & Mullen, 2004).

In recent years, stalking is often placed within the realm of violence against women (White, Kowalski, Lyndon & Valentine, 2001) or domestic violence (Baldry, 2002). A recent European study into violence against women, for instance, mentions stalking in the same breath as female genital mutilation, domestic violence, forced marriages, rape and sexual intimidation (EU Commission, 2010). National and international legislation perceive stalking from a certain gender or domestic violence perspective as well. In the new Council of Europe Convention on preventing and combating violence against women and domestic violence, stalking is explicitly included as a form of violence against women that should be criminalized (article 34).

Whether this is a good development is debatable. In comparison, for decennia there has been a bitter fight over the question if domestic violence constitutes a form of violence against women or not (Nixon, 2007; Anderson, 2005; Dobash, Dobash, Wilson & Daly, 1992; Dutton & Nicholls, 2005). Researchers who found symmetric prevalence numbers – women and men are approximately just as often victim and offender of domestic violence – profess a gender neutral interpretation of domestic violence, whereas other (feminist) researchers hold on firmly to the gender specific conceptualization of the problem. This issue is important, not only because a proper analysis of the problem could contribute to its solution, but also because the distribution of government funds could be linked to the outcome of the debate, such as financial support of shelters for male victims.

Against this backdrop, it is surprising that little attention has been paid to the discussion on gender specificity within the stalking discourse. Is stalking really a form of violence against women? Or of domestic violence? How did the gender specific and domestic violence interpretation of stalking come into existence? What are the advantages and disadvantages of these perspectives and shouldn't a neutral perspective be preferred? Does it make any difference whether the gender specific and domestic violence perspective is being used in research or in legislation? These and other questions will form the basis of the present article.

In order to answer these questions, an overview of the dif-

ferent ways in which stalking has been perceived over the years will be presented first (§ 2). Although stalking was initially connected to domestic violence perpetrated by a male offender against a female victim, the stalking paradigm has slowly shifted towards a more heterogeneous understanding of the phenomenon, including victims and offenders from both genders and non-intimate stalking. In the next two paragraphs the results of several empirical studies into stalking as a form of violence against women (§ 3) and domestic violence (§ 4) are presented. In § 5 some of the national and international legal measures against stalking are described, with a specific focus on the gender- and domestic violence perspective in legislation, and their implementation in practice. In this respect, not only the specific anti-stalking provisions will be discussed, but more generic protection measures with relevance for stalking victims, such as protection orders, will be taken into account as well. Subsequently, the advantages and disadvantages of a gender specific and domestic violence approach in research and legislation are discussed (§ 6) after which the article will finish with a conclusion (§ 7).

2. Different interpretations of stalking

Stalking is a new word for behaviour that is as old as mankind (Mullen, Pathé & Purcell, 2001; Finch, 2001, p. 27; Meloy, 1998, p. 4). However, it was only after the media started denominating the serial killer Son of Sam and the paparazzi who tailed Jacky Kennedy with the word 'stalking' in the 1980s, that it was linked to the phenomenon of unwanted pursuit and harassment. The word soon caught on and became the common term to describe the behaviour of serial killers, rapists, and celebrity murderers (Kamir, 2001, p. 148).

Over the years, the interpretation of the word stalking has changed. Lowney & Best (1995) analysed press releases that were published or broadcasted in the period from 1980 until 1994 and they discovered that the meaning of the concept had undergone some transformations. In the period from 1980 and 1988 the term was, for instance, used to describe sexual intimidation, obsessive pursuit and psychological violence committed by a man against his female (ex)partner. Despite the efforts of the women's movement, this form of stalking received little media attention.

This changed in the period between 1989 and 1991 when, in the wake of the murder of the famous American actress Rebecca Shaeffer by her former stalker, the term became associated with the relentless pursuit of celebrities by obsessed fans (celebrity stalking). Shaeffer's murder generated much publicity and from that moment onwards, stalking was predominantly seen as an issue that celebrities had to cope with.

Heavily influenced by the domestic violence lobby, the stalking rhetoric in the media returned again to the situa-

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tion in which women were harassed by their male ex-partners in 1992. Stalking was redefined as a widespread form of domestic violence and this time, stalking did receive the attention it deserved. The media portrayals of stalking victims caused considerable commotion and together with other social developments – such as the increased sensitivity for violations of privacy and the changed role of women in society – they brought about recognition for stalking as a serious social problem (Mullen, Pathé & Purcell, 2009). In 1990 it even led to the enactment of the first anti-stalking law in California. From that moment on, the increased attention for stalking persisted, even when the concept was broadened to include behaviour committed by others than the male ex-partner.

Nowadays, stalking is studied in all its forms, regardless of the (former) relationship between the offender and the victim, but there are numerous researchers who continue interpreting stalking as a form of violence against women and/or domestic violence (Coleman, 1997; Baldry, 2002; Burgess et al., 1997). Many national and international legislators are attracted to this paradigm as well (see paragraph 5). Furthermore, the stereotype stalking scenario – that of a man harassing his female ex-partner – has firmly set in the minds of numerous people. The next two paragraphs examine the empirical support for the legitimacy of a gender specific or domestic violence perspective to the problem.

3. Stalking as a form of violence against women?

Whether stalking can be considered a gender specific problem depends on the definition of 'violence against women'. Following the example set by the Council of Europe Convention and several other international documents, the current article defines 'violence against women' as:

(...) a violation of human rights and a form of discrimination against women and shall mean all acts of gender-based violence that result in or are likely to result in, physical, sexual, psychological or economic harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life (Art. 3(a) Council of Europe Convention on combating and preventing violence against women and domestic violence)¹.

'Gender-based violence' is defined as 'violence that is directed against a woman because she is a woman or that affects women disproportionately' (Art. 3(d) Council of Europe Convention on combating and preventing violence against women and domestic violence)².

- 1 Similar definitions can be found in CEDAW Committee General Recommendation No. 19 on violence against women (1992), the United Nations General Assembly Declaration on the Elimination of Violence against Women (1993), and Recommendation Rec(2002)5 of the Committee of Ministers of the Council of Europe to member states on the protection of women against violence (2002).
- 2 There are also definitions which distinguish sex specific violence from gender specific violence, in which sex refers to the bio-

In other words, the designation 'gender specific violence' can be justified by the underlying motive – violence against a woman, because she is a woman³ – but also the fact that a certain type of violence affects women disproportionately often or hard can be sufficient to qualify that type of violence as a form of violence against women. Since research into the underlying motive or the deeply rooted social and cultural notions on gender and inequality of power as the underlying cause of stalking has not been carried out yet, the question of whether stalking is a form of violence against women can only be assessed by looking at the prevalence of the problem amongst both men and women.

In Table I the results of several large scale prevalence studies on stalking are presented, with the restriction that only studies that (also) differentiate between male and female victims have been included. Although the studies present large disparities when it comes to exact percentages, they *all* show that women fall victim to stalking more often than men.

If we now take the definition of violence against women and place it against the results depicted in table 1, it is fair to conclude that the conceptualisation of stalking as a form of violence against women is probably appropriate. Women run a far bigger risk of becoming a victim of stalking than men. Whether that risk is disproportionately bigger is a matter of interpretation, but in most studies the percentages of male and female victims deviate to such an extent, that it is fair to say that the difference is disproportionate and, consequently, that stalking is a form of violence against women.

Some authors have recently begun to challenge the gender-asymmetry found in stalking prevalence research, claiming that these studies may underestimate male victimization, because men may be less likely than women to self-identify as victims of stalking (Langhinrichsen-Rohling, 2012). The main cause for the underestimation of male victimization would be the fact that men report lower levels of fear in response to stalking experiences, a required definitional component of many surveys. This does not take into account that even general population studies without fear requirement (Van der Aa & Kunst 2009) find women at far greater odds of becoming a victim of stalking.

logical differences between men and women and gender to the ideas and prejudices on manliness and femininity and the sex stereotyping that comes along with those ideas (e.g., Schreijenberg, De Vaan, Vanoni & Homburg, 2010, p. 6). Violence that affects women disproportionately would fall under the category 'sex specific violence', whereas violence against a woman, because she is a woman, would categorise as 'gender specific violence'. The definition chosen in this article does not differentiate between sex specific and gender specific violence.

- 3 See Committee of Ministers, Explanatory report to the Council of Europe Convention on combating and preventing violence against women and domestic violence (CM (2011) 49 final) of 7 April 2011. According to the explanatory report, this type of violence is both the cause and the consequence of the inequality of power between men and women in society.

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Table I

Large scale (> 400 respondents) studies into the prevalence of stalking within the general population by gender

Author(s) (year)	Country	Sample size	Lifetime prevalence %	Lifetime prevalence by gender %	
				Female	Male
Van der Aa & Kunst (2009)	The Netherlands	1,027	16.5%	20.7%	13.4%
Van der Aa & Pemberton (2009)	The Netherlands	88,607	24%	28.6%	19.2%
Aucoin (2005)	Canada	24,000	9%	11%	7%
Basile et al. (2006)	United States	9,684	4.5%	7%	2%
Budd & Mattinson (2000)	England & Wales	9,988	11.8%	16.1%	6.8%
Coleman et al. (2007)	England & Wales	26,214	-	23%	13%
Dressing et al. (2005)	Germany	679	11.6%	17%	4%
Finney (2006)	England & Wales	24,498	-	23.3%	15.2%
Morris et al. (2002)	Scotland	1,024	-	17%	7%
Purcell et al. (2002)	Australia	1,844	23.4%	32.4%	12.8%
Stieger et al. (2008)	Austria	401	11%	17%	3%
Tjaden & Thoennes (1998)	United States	16,000	-	8.1%	2.2%
Walby & Allen (2004)	England & Wales	22,463	-	18.9%	11.6%

There is, however, yet another reason to focus on female victims of stalking. Although existing literature is divided, the gender of the victim is often associated with the seriousness of the consequences of the stalking as well. Sheridan & Lyndon (2011), for instance, found that stalking had a larger impact on the mental and physical well-being of women than men⁴. From that point of view, one could also argue that women are 'disproportionally affected' by stalking, but then the disproportionality refers to the health and other negative consequences of stalking instead of the numerical preponderance of stalking victimization amongst the female population.

At the same time, it is important to acknowledge that all studies invariably report high percentages of male victimization as well. Even if we depart from the most conservative estimation of 2% (Basile, Swahn, Chen & Saltzman, 2006), this would still mean that a large part of the male population has (had) to deal with unwanted, repetitive and possibly frightening behavior. Men are not immune to the sometimes very negative consequences of stalking either. Some of them have suffered from psychosomatic complaints, fear and depression as a result of the systematic violations of their privacy, just like their female counterparts.

4. Stalking as a form of domestic violence?

Where the aforementioned studies focused on the gender dimension of stalking, other studies have emphasized the relationship between stalking and domestic violence instead (Coleman, 1997; Baldry, 2002; Burgess et al., 1997). Many men would use stalking as a technique to intimidate and control their (ex)partners and force them to continue or renew the intimate relationship. Indeed there have been studies that found a relationship between (violent) intimate relationships and stalking. Tjaden & Thoennes (2000), for instance, discovered that 16.5% of the 1,785 police files on domestic violence contained stalking (like) behaviour and in Burgess' (1997) sample of domestic violence offenders one in every three admitted to have stalked the partner during the relationship. Also, in a large-scale study amongst 16,000 Americans, 60% of the female and 30% of the male stalking victims had been stalked by the current or former partner (Tjaden & Thoennes, 1998). Finally, 29% of the women who had escaped a violent relationship reported that they had been stalked by their former partners in the month previous to the research of Mechanic et al. (2000). All in all, stalking by ex-partners seems to be a pervasive problem⁵.

Not only does a former (violent) relationship increase

4 Keuner et al. (2006) on the other hand, found that the connection between stalking and poor mental health, psychosocial functioning and medicine abuse was equally strong for both men and women.

5 However, there are also studies that report a much smaller proportion of ex-partner of ex-intimate stalking (e.g., Van der Aa & Pemberton, 2009).

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the risk of stalking victimization, a prior romantic involvement also has an influence on the seriousness and duration of the stalking. In general, ex-partner stalkers are more violent and more persistent than other stalkers (Tjaden & Thoennes, 1998; Pathé & Mullen, 1997; Björklund, Hakkanen-Nyholm, Sheridan & Roberts, 2010).

Although there seems to be a significant correlation between stalking and a former (violent) relationship between victim and offender, this is far from a one-on-one correspondence. The spectrum of both victims and offenders is much wider: not all violent partners use stalking techniques during the relationship, not all intimate stalkers were violent before the break-up, and there are ample examples of stalking cases in which there was no prior romantic involvement between the stalker and the victim at all (Van der Aa, 2010).

5. Stalking as a form of domestic violence against women in legislation and practice

5.1. National legislation and practice on stalking

How does this translate into the anti-stalking legislation of the different European member states and the implementation of this legislation in practice? When comparing European member states, a first difference that attracts the attention is the fact that many of them have not enacted specific anti-stalking legislation at all. Only thirteen out of the twenty-seven member states have explicitly criminalized stalking⁶. The other member states rely on general provisions, such as assault, vandalism, and defamation or slander, or they do not consider the behavior to be a social problem (see European Commission, 2010). This is different from the United States where within four years all fifty states and the District of Columbia had enacted anti-stalking legislation (Purcell, Pathé & Mullen, 2004).

If we look to the European countries that have criminalized stalking, we see that none of them have opted for a gender specific legal definition (see legal definitions in Appendix). All criminal provisions are gender neutral and do not explicitly distinguish between a male or a female victim, at least not at first glance. However, stalking definitions may be designed in a manner that unintentionally, systematically includes male perpetration or excludes male victimization. The incorporation or exclusion of certain behaviors in stalking definitions may change the degree to which women and men meet the criteria for stalking perpetration, because certain stalking activities may be gender-specific (Davis, Swan & Gambone, 2010; Thompson, Dennison & Stewart, 2010). If, for instance, mild to moderate physical violence is included in stalking provisions, this may increase the odds of identifying women as stalking perpetrators (Thompson, Dennison & Stewart, 2010), just as gossiping (Davis, Swan & Gambone, 2010) or scraping keys across an ex-partner's car

(Langhinrichsen-Rohling, 2012). Behavior that has been identified as typically male is, for instance, repeatedly sending unwanted gifts after being rejected (Yanowitz & Yanowitz, 2010). Closer inspection of the stalking definitions reveals that many of them have indeed included a (limitative) list of stalking tactics, such as seeking physical proximity, using means of telecommunication, soliciting by proxy stalking, or threatening the victim (e.g., Austria, Czech Republic, Denmark, Germany). Other definitions have included the requirement that the suspect must have had *mens rea* to cause fear in the victim (e.g., Italy). This may decrease the degree to which stalking is recognized as a crime committed by women, since research indicates that female offenders are less likely to perceive their behavior as fear-inducing, even when they employ the same stalking techniques as male stalkers (Thompson, Dennison & Stewart, 2010). Unfortunately, the current state-of-the-art in stalking research does not allow for decisive conclusions on which tactics are primarily employed by male or female stalkers and, consequently, which legal definitions inadvertently direct the attention towards male or female perpetrators, but chances are that some stalking definitions are implicitly gender-specific when it comes to perpetration.

A similar line of reasoning goes for stalking *victimization*. Irrespective of the actual dangerousness of a given situation, male victims of stalking experience less fear than do female stalking victims, with women reporting greater overall fear levels compared to men (Tjaden & Thoennes, 2000; Sheridan & Lyndon, 2010). This means that fear because of stalking victimization can be considered a gender-based construct. This raises concerns about the legislative component in certain EU Member States that requires victims to have experienced fear as a result of the stalking (e.g., Czech Republic). Given that levels of fear are gender-influenced, more women than men will meet this criterion.

As for stalking and domestic violence: most criminal provisions leave the explicit link with domestic violence out of the equation as well. This means that stalking outside the domestic context is also criminalized; at least the legal definition is not restricted to the domestic (violence) context. The only three legal definitions that do distinguish between stalking inside and outside the domestic circle are the German, the Italian, and the Hungarian. In Germany, stalking is usually prosecuted after a complaint of the victim, but the public prosecutor can prosecute ex-intimate stalkers *ex officio*. This exception was deemed necessary, because one cannot expect the victim to ask for the prosecution of the ex-partner. Still, this distinction is only trivial: in Germany all stalking is criminalized regardless of the prior relationship between victim and offender, only the formal requirements of prosecution differ. The Hungarian and Italian stalking legislators made (ex)intimate stalking an aggravated offence.

However, although the anti-stalking legislation in the European member states is in principle neutral, supplementary policy or the implementation of the law in practice can bear more explicit reference to a gender specific approach or an approach focused on ex-intimate stalking. In the Netherlands, for instance, the stalking legislation is applicable to all victims regardless of their gender or the prior relationship with their stalker. However, when guidelines for the police and the public prosecution service are taken into account, the policy towards stalking may not be as neu-

6 These member states are: Austria, Belgium, the Czech Republic, Denmark, Germany, Italy, Luxembourg, Malta, the Netherlands, Ireland, Hungary, Poland and the UK. In Finland discussions on the criminalization of stalking are reaching the final stage.

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tral as it appears at first sight. According to the domestic violence and honor based violence instruction (*Aanwijzing huiselijk geweld en eergeleerd geweld*)⁷:

Domestic violence is violence perpetrated by someone from within the domestic circle of the victim. This includes physical and sexual violence, *stalking* and intimidation (whether or not perpetrated by means of, or involving the damaging of goods in and around the house). Suspects of domestic violence can be: (ex)partners, family members and family friends. Suspects can be male and female, children or adults (including the elderly) [translation and emphasis – SvdA].

This excerpt shows that in the Netherlands, domestic violence can consist of stalking. In itself, this does not mean that stalking is *exclusively* linked to domestic violence, but it is remarkable that this is the only time the word 'stalking' appears in a policy guideline of the public prosecution service. There is no separate guideline for stalking outside the domestic circle of the victim, such as stalking by strangers or acquaintances other than family friends.

The enforcement of anti-stalking legislation in practice bears even stronger witness to the link between stalking, domestic violence and gender. From interviews with Dutch police officers and public prosecutors it appears that stalking is generally seen as a form of domestic violence and that it is mostly police officers and prosecutors who specialize in domestic violence who are assigned to take on stalking cases (Van der Aa, 2010, p. 157). Furthermore, instead of providing for a separate course or training for law enforcement personnel, stalking is usually dealt with during general courses on domestic violence (Van der Aa, 2010, pp. 165–166). The inadvertent consequence could be that less experienced law enforcement officers might overlook stalking committed outside the domestic circle. In fact, even the interviewed police officers and prosecutors – all experts in the field of stalking – harbored certain prejudices. Some of them, for instance, automatically qualified stalking outside the domestic circle as 'less serious' and they preferred victims of other types of stalking to look for alternative solutions first before going to the police (Van der Aa, 2010, p. 176).

Similar prejudices were found in comparing male and female victimization scripts. Male victims of stalking were generally perceived as being more capable to solve the stalking problem themselves, to experience less fear, and to be (co-) responsible for their own victimization (Wigman, 2009). Reports of fear by the victim also have been shown to have an impact on juror's perceptions of the stalking event (Dunlap, Hodell, Golding & Wasarhaley, 2011). If these preconceptions continue to reverberate throughout the legal system – also impacting police responses and trial verdicts – identical types of stalking will be judged differently when perpetrated or experienced by a man or a woman (Langhinrichsen-Rohling, 2012). In other words, even though the law in the books does not depart from a certain gender or domestic violence bias, the law in practice may.

7 Aanwijzing huiselijk geweld en eergeleerd geweld, *Staatscourant* 2010, 6462.

5.2. National legislation on protection orders

Where the gender and domestic violence dimension is only expressed indirectly in anti-stalking legislation and regulation – mainly in policy guidelines, practice and legislative components that may inadvertently be gender-biased – it becomes much more specific once the legislation on protection orders is taken into account. For criminalizing stalking is not enough: victims should also have access to other types of protection to prevent repeated victimization. Victims of crimes that are characterized by multiple incidents, such as stalking and domestic violence, have an additional need for protection compared to victims of single-incident crimes. For that reason, protection orders have significantly gained in popularity ever since the 1970s, first as a civil law measure in divorce proceedings, but later on also as an action independent from divorce proceedings or as a criminal law measure. As soon as the order is imposed, the offender is no longer allowed to contact the victim or to be in the victim's vicinity for a dedicated period of time.

A first inventory of protection order legislation in the European member states showed that many countries exclusively reserve this type of legislation for (female) victims of domestic violence (Van der Aa, 2011). In Bulgaria, Italy, Hungary and Slovenia, for instance, the *civil* protection orders are only available to victims of domestic violence. In Malta, France and Lithuania even stricter criteria apply: civil protection orders can only be imposed in cases of domestic violence if the applicant has simultaneously initiated a divorce proceeding. Cyprus, the Czech Republic, Greece, Hungary and possibly also Spain provide *criminal* protection orders only to victims of domestic violence.

Although these results need to be interpreted with caution⁸, it seems as if some member states only allow access to civil and/or criminal protection orders to victims of domestic violence, not to others. This means that victims who are stalked by someone other than their ex-partners cannot benefit from these protection measures⁹. Victims who are stalked by acquaintances, strangers or sometimes even (ex)partners whom they have not entered into matrimony with are denied this form of protection. And again, even if *de jure* the measure is not linked to the (prior) relationship between stalker and victim, *de facto* it might be imposed in situations of ex-intimate stalking only (Van der Aa, 2011). As a consequence, in some countries the range of persons protected by these orders may even be smaller in practice than the – sometimes already restricted – text of the protection order provisions suggests.

8 The sources that formed the basis of the article were sometimes difficult to interpret and often contradicted one another (see Van der Aa, 2011 for the limitations of the study).

9 In some of these countries *criminal* protection orders are probably unattainable for *all* stalking victims, given that stalking is not even criminalized to begin with.

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5.3. *The Convention on combating and preventing violence against women and domestic violence*

On an international level the interpretation of stalking as a form of violence against women is even more evident. An example is the resolution of the European Parliament on violence against women¹⁰ and the Council of Europe Convention on combating violence against women and domestic violence [hereafter: the Convention] that was opened up for signature on 11 May 2011. When the Convention is enacted, it will be the first legally binding international instrument on the European continent on violence against women and domestic violence. The Convention has a clear gender dimension: violence against women and domestic violence are seen as forms of discrimination and gender specific violence, although it is acknowledged that men can fall victim to domestic violence as well, albeit to a much lesser extent than women (see preamble).

As mentioned before, the Convention prescribes the criminalization of stalking. Article 34 reads as follows:

Parties shall take the necessary legislative or other measures to ensure that the intentional conduct of repeatedly engaging in threatening conduct directed at another person, causing her or him to fear for her or his safety, is criminalised.

At first sight, this provision seems neutral: both male and female victims; and both ex-intimate and non-intimate victims are protected. But again, the fear-requirement may have an impact on men's ability to recognize themselves as stalking victims and on their chances to have their case successfully followed through the criminal law system. Also the fact that stalking perpetrated by men is generally perceived as more threatening than identical activities employed by women can have a bearing on the gendered interpretation of this stalking definition. After all, Article 34 requires the engagement in 'threatening' conduct. Furthermore, although Article 34 itself does not explicitly distinguish between gender or a domestic violence context it has to be read in conjunction with the other provisions and the explanatory report. Then the gender-neutral interpretation of Article 34 becomes less straightforward.

It seems, for instance, that the Convention only explicitly acknowledges male victims in cases of *domestic violence*, not other forms of violence covered by the Convention¹¹. Also, the signatory states are only *encouraged* to combat (do-

mestic) violence against men¹². It is up to the states to decide whether the applicability of the Convention is extended to male victims as well, as long as female victims are protected. This suggests that the focus should remain on combating violence against women at all times. Indeed, the Convention even imperatively prescribes that states include a 'gender perspective in the implementation and evaluation' of the provisions of the Convention (article 6). Finally, even though the drafters of the Convention stipulate that all criminal law provisions of the Convention should in principle be presented in a gender-neutral manner, signatory states are free to introduce gender-specific provisions¹³. Although the Convention itself seems to lean towards a criminalization of stalking that is (at least outwardly) gender-neutral, these 'mixed messages' could give rise to interpretative issues as to whether male victims should fall under the definition of stalking or not.

The gendered focus is even more apparent when it comes to *protective, supportive and preventive* measures. All protection and support measures enumerated in chapter 4 of the Convention, for instance, need to be based on a 'gendered understanding' of violence against women and domestic violence (Article 18(3)). This gendered understanding is, for example, manifested in the fact that parties need to provide for sufficient numbers of shelters, *'especially for women and their children'* (Article 23 and consideration 133 Explanatory report). Furthermore, all professionals in contact with victims need to receive gender sensitive training (considerations 98 and 99 Explanatory report).

It is not clear how the words 'gendered understanding' and 'gender sensitive' have to be interpreted. If it means that protection of women victims should be prioritized at the expense of male victims *who experience similar types of stalking behavior*, e.g., because public funding does not allow for all victims to be protected and supported, the Convention would strike the wrong cord. In my opinion, a 'hierarchy of suffering' based on gender alone is unwarranted in the criminal, civil or administrative justice context and it would attest to a form of improper discrimination itself. Given equal stalking severity, the gender of the victim should not influence the course of a criminal procedure or the access to protection orders. If, on the other hand, gender-sensitive means that the needs of male and female victims may vary and that the justice system should take this into account to the greatest extent possible without depriving other (male) victims of their right to protection, then a gender-sensitive interpretation of stalking is no longer objectionable. Female victims may, for instance, have an additional need for protection of their children. Also they may need extra help in finding paid employment or other ways of securing financial independence.

10 On 5 April 2011 the European Parliament adopted a non-binding resolution on a new EU policy plan to fight violence against women (European Parliament Resolution of 5 April 2011 on priorities and outline of a new EU policy framework to fight violence against women (2010/2209/INI). According to the Members of Parliament stalking 'should be considered as a form of violence against women and be subject to a legal framework in all Member States.'

11 See consideration 45 of the Explanatory report (Committee of Ministers, Explanatory report to the Council of Europe Convention on combating and preventing violence against women and domestic violence (CM (2011) 49 final) of 7 April 2011).

12 See consideration 37 of the Explanatory report.

13 See consideration 153 of the Explanatory report.

6. Advantages and disadvantages of a gender or domestic violence perspective

How should the various perspectives on stalking be appreciated? From the stalking victims' point of view, which advantages and disadvantages are connected to a gendered or a domestic violence interpretative framework?

An apparent advantage of placing stalking within the framework of (domestic) violence against women is the fact that in the 1980s and 1990s it generated much attention for the phenomenon. Thanks to the link with (domestic) violence against women the relatively unknown problem of stalking became familiar to a large number of people. It was no longer uniquely associated with celebrities and society at large came to recognize stalking as a problem which could affect ordinary men and women as well. Nowadays the linkage of stalking with domestic violence and violence against women remains useful in that respect, because both topics are at the centre of (legislative) attention. Not only is more and more legislation produced in both areas, but stalking also profits from the very active and well organized violence against women lobby which continues placing stalking on the political agenda.

There is also a very pragmatic argument in favour of positioning stalking within the (domestic) violence against women context. Fact is that women run a much higher risk of becoming victim of stalking, so law enforcement agents and aid workers had better reckon with this widespread scenario. It is therefore sensible to reserve most of the available facilities for female victims instead of men. It also appears that ex-partner stalking generally proceeds in a more serious and protracted manner than other types of stalking. If one takes this into account – e.g., in making a risk assessment which allows victims of ex-partner stalking to qualify for protection measures sooner – this only indicates sound judgment.

Likewise there are very few objections to studying stalking within the (domestic) violence against women context from a scientific point of view. Although stalking should be studied in all its manifestations, it remains relevant to investigate how the connections between domestic violence, gender and stalking can be interpreted and to validate previous findings. Are, for instance, ex-intimate stalkers indeed more prone to use physical violence or not? Does stalking indeed have a bigger impact on women or do other factors play a role? And which stalking tactics are typically male or female? Based on the outcome of these studies a reliable stalking typology or risk assessment instrument could be developed, which in turn could contribute to the design of (more) effective anti-stalking measures.

But there is a possible downside. The same explicit linkage of stalking to (domestic) violence against women can turn out wrong for stalking victims. Precisely because of its strong gendered focus and its reference to gender discrimination the Council of Europe Convention may run the risk of putting off certain signatory states¹⁴. States which

prefer a gender (discrimination) neutral approach to crimes and criminalization may hesitate to sign the Convention, let alone ratify it. So far only nineteen states have signed the Convention and there has been only one ratification (Turkey)¹⁵. The in itself gender neutral recommendation to criminalize stalking might get lost because of this.

The most important problem of a gender specific or domestic violence perspective, however, is that it may put certain stalking victims at a disadvantage. If legislation or regulation is only applicable to female victims or victims of ex-partner stalking, the disadvantage is obvious, but also with (outwardly) neutral legislation there is a risk that certain victims remain unnoticed or are confronted with disbelief and ridicule by law enforcement agents and by their environment. Because of unfamiliarity with the different manifestations of stalking, the inadvertent gender specificity of certain legal definitions of stalking, and because of taboos surrounding certain forms of stalking – think of stalking of a male victim by a female offender – even the victims themselves may fail to recognize their own victimization and may refrain from reporting their experiences to the police (Englebrecht & Reyns, 2011). Male victims, for instance, are more likely to be held responsible for their own victimization, to suffer less, and to be able to control the stalking without external interference (eWigman, 2009). As a result, certain forms and certain victims of stalking may be overlooked.

Conclusion

The characterization of stalking as a form of *violence against women* finds support in many empirical studies. Large-scale community surveys report without exception an overrepresentation of female victims. In this respect, stalking differs from domestic violence, where symmetrical prevalence numbers are found on a regular basis. From this point of view, a gender neutral approach to stalking would be inaccurate. Stalking furthermore seems to have a more negative impact on female than on male victims, albeit that the literature is less unambiguous on this point. The characterization of stalking as a form of *domestic violence* finds resonance in various empirical studies as well. Many victims are stalked by their (violent) ex-partners and ex-intimate stalking is generally more serious and long-lasting than other types of stalking.

As a result, stalking can generally be considered a form of (domestic) violence against women. Devoting more financial means, manpower and scientific research to these forms of stalking rather than other ones therefore seems reasonable and rational. Even guidelines for the police and the public prosecution service which focus on stalking by ex-partners or female victims may be justified as long as one does not overlook cases that do not fit this stereotype. In protocols, policy rules and courses for law enforcement personnel and aid workers it may be emphasized that stalking usually affects women and that ex-intimate stalkers gener-

14 Compare General Recommendation 19 of the CEDAW Committee which also links violence against women to discrimination. Meyersfeld (2010) argues that because of this linkage, it becomes difficult for states that practice gender discrimination or gender differentiation to ally themselves with the Recommendation (p. 37).

15 This was the state of affairs on 28 May 2012. For an update, see: http://www.coe.int/t/dghl/standardsetting/convention-violence/default_EN.asp?

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ally exhibit more serious behavior, but at the same time it needs to be stressed that these types of stalking are not the only ones.

For it remains important to realize that stalking is a heterogeneous phenomenon: large quantities of men are victimized just as well and a significant part of the victim population is made up by people who are stalked by others than their ex-partners. Many of these victims have to cope with serious forms of stalking and they are equally entitled to help. Just because men are victimized less often or because non-intimate stalking victims suffer from less protracted periods of stalking, they should not be deprived of protection beforehand.

An analysis of the legislation in the thirteen European Member States that criminalized stalking revealed that outwardly these legal anti-stalking provisions generally do not explicitly distinguish between male and female victims and between intimate and non-intimate partner stalking. However, by including a (limitative) list of stalking tactics that may be gender-specific or by including a fear-requirement it is possible that these provisions are inadvertently gender-biased. When it comes to protection order legislation, the focus on ex-partner stalking is more prominent. Some states reserve criminal or civil protection orders exclusively for (female) victims of domestic violence, not others.

This brings along a fundamental question: may the classification of stalking as a form of (domestic) violence against women lead to a privileged position of female victims or victims of domestic violence in legislation, as is now the case in certain European countries and – depending on the interpretation of ‘gendered understanding’ – in the CoE Convention? In other words, is positive discrimination by law justified when it comes to *victimization*?

In the past, certain crimes that affected women disproportionately, such as domestic violence, were given low priority. For a long time domestic violence was seen as a private matter in which the government had no right to interfere. It is only fair that this prioritization was criticized and adjusted, for often very serious incidents of violence were ignored. However, it appears as though lately some legislators have overcompensated their past indifference, causing male victims or these typically ‘female’ crimes and non-intimate stalking victims to be neglected. Professionals may be alerted to the fact that stalking affects women disproportionately or that ex-partner stalking usually is of a more serious nature – information of this kind only facilitates the identification of the crime and it contributes to a proper risk assessment – but it should not influence the course of a criminal procedure or the access to protection orders if the stalking is equally severe in nature, duration and frequency.

For when it comes to victimization, the *seriousness* of the crime should always be the decisive factor, not the gender of the victim or the nature of the victim’s (prior) relationship to the offender. If certain victims are more vulnerable – e.g., victims who are financially, socially or emotionally dependent on their stalker which makes it harder for them to withdraw from the violence – this can be expressed in policy guidelines for the police and the prosecution service, but there should always be room an adequate reaction to other forms of stalking which may be just as serious. This is impossible when simple protection

measures such as protection orders are reserved for a certain type of victim only. Protection orders should be available to *all victims* and anti-stalking legislation should be drafted in a manner that includes male and female, intimate and non-intimate stalking.

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APPENDIX

Country	Term used to define stalking	Year of coming into force	Legal definition of stalking
Austria ¹	'Beharrliche Verfolgung'	2006	§107a of the Criminal Code: '(1) He who unlawfully insistently persecutes a person shall be punished with imprisonment of up to one year. (2) A person insistently persecutes if he, in a suitable way, with the intention of seriously affecting his way of life, during a longer period of time 1. seeks his physical proximity 2. uses telecommunication or other means of communication or third parties to get into contact with him 3. by using his personal data orders goods or services for him 4. by using his personal data, prompting third parties to contact him.'
Belgium ¹	'Belaging'	1998	Article 442bis of the Criminal Code: 'He, who harassed a person, while he knew or should have known that due to his behaviour he would seriously disturb this person's peace, will be punished with a term of imprisonment of fifteen days to two years and with a fine ranging from 50 euro to 300 euro or with one or those punishments. The behaviour described in this article can only be prosecuted following a complaint by the person claiming to be harassed.'
The Czech Republic ¹	'Nebezpečné pronásledování'	2010	§354 of the Criminal Code: 'He who pursues another for a long time by a) threatening him or a person close to him with harm to health or any other harm b) seeking his proximity or following him; c) persistently contacting him by electronic means, in a written form or otherwise; d) restricting him in his usual way of life; or by e) abusing his personal information in order to obtain personal or other contacts; and such conduct may invoke reasonable fear in the person pursued regarding his life or health, or the life or health of persons close to him.'
Denmark ²	'Forfølgelse'	1933	§265 of the Criminal Code: 'Any person who violates the peace of some other person by intruding on him, pursuing him with letters or inconveniencing him in any other similar way, despite warnings by the police, shall be liable to a fine or to imprisonment for a term not exceeding 2 years. A warning under this provision shall be valid for 5 years.'
Germany ³	'Nachstellung'	2007	§238 of the Criminal Code: 'Whosoever unlawfully stalks another person by 1) Seeking his proximity 2) Trying to establish contact with him by means of telecommunications or other means of telecommunication or through third persons 3) Abusing his personal data for the purpose of ordering goods or services for him or causing third persons to make contact with him 4) Threatening him or a person close to him with loss of life or limb, damage to health, or deprivation of freedom, or 5) Committing similar acts and thereby seriously infringes his lifestyle shall be liable to imprisonment of not more than three years or a fine. (2) The penalty shall be three months to five years if the offender places the victim, a relative of or another person close to the victim in danger of death or serious injury (3) If the offender causes the death of the victim, a relative of or another person close to the victim the penalty shall be imprisonment from one to ten years. (4) Cases under subsection (1) above may only be prosecuted upon request unless the prosecuting authority considers <i>proprio motu</i> that prosecution is required because of special public interest.'

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Hungary ¹	'Zaklatás'	2008	§176/A of the Criminal Code: '(1) Any person who with the intention to intimidate another person, or to disturb the privacy or the everyday life of another person, engages in the regular or persistent harassment of another person, by regularly seeking contact with a person against his/her will, either in person or by means of telecommunication, even if no serious crime has been committed, is guilty of an offence, punished by one year imprisonment, community work or a fine. (2) He who, for the purpose of intimidation, threatens to commit a punishable violent act against a person or a relative of this person, thereby putting that person in imminent fear of his/her life or health, or the life or health of a relative of this person is guilty of an offence, punished by two years imprisonment, community work or a fine. (3) He who harasses (a) a former spouse or registered partner, (b) a person under his care, custody, supervision or medical care, as mentioned in (1) shall be punished by two years' imprisonment, community work or a fine, or, as guilty of the criminal offence mentioned in (2), with three years' imprisonment.'
Ireland	'Harassment'	1997	Non-fatal Offences against the Person Act: Section 10: 'Any person who, without lawful authority or reasonable excuse, by any means including by use of the telephone, harasses another by persistently following, watching, pestering, besetting or communicating with him or her shall be guilty of an offence. For the purposes of this section a person harasses another where (a) he or she, by his or her acts intentionally or recklessly, seriously interferes with the other's peace and privacy or causes alarm, distress or harm to the other and (b) his or her acts are such that a reasonable person would realize that the acts would seriously interfere with the other's peace and privacy or cause alarm, distress or harm to the other. A person guilty of an offence under this section shall be liable (a) on summary conviction to a fine not exceeding £ 1,500 or to imprisonment for a term not exceeding 12 months or to both, or (b) on conviction on indictment to a fine or to imprisonment for a term not exceeding 7 years or to both.'
Italy ⁴	'Atti persecutori'	2009	Article 612bis of the Criminal Code: 'If it is not a more serious crime, he who repeatedly harasses or threatens another person in order to cause a persistent anxiety or fear or a serious concern for his/her safety or for the safety of another person, linked to the victim by an affective bond, or to oblige such person to change his/her own life habits, is punished with imprisonment from six months to four years. The punishment is increased if the author of the crime is an ex-partner of the victim. The punishment is increased up to half if the victim is a minor, or a pregnant woman or a person with disabilities as article 3 law n. 104 of 1992, or if the fact is committed with weapons or by a distorted person. The crime is punishable on the complaint of the victim. The authority proceeds <i>ex officio</i> if the fact is committed against a minor or a person with disabilities (...) as well as when the fact is connected with another crime for which <i>ex officio</i> action is foreseen.'
Luxemburg ¹	'Harcèlement obsessionnel'	2009	Article 442-2 of the Criminal Code: 'Anyone who repeatedly harassed a person while he knew or should have known that by such conduct he would seriously affect the tranquillity of that person, shall be punished with imprisonment of fifteen days to two years and a fine of 251 to 3000 euro, or one of these penalties. The offence in this article shall be prosecuted on the complaint of the victim, his legal representative or his assigns.'
Malta ²	'Fastidju'	2005	Article 251A of the Criminal Code: 'A person who pursues a course of conduct which amounts to harassment of another

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			<p>person, and which he knows or ought to know amounts to harassment of such other person, shall be guilty of an offence under this article. For the purpose of this article, the person whose course of conduct is in question ought to know that it amounts to harassment of another person if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other person. A person guilty of an offence under this article shall be liable to the punishment of imprisonment for a term of one to three months or to a fine of not less than two thousand and three hundred and twenty-nine euro and thirty-seven cents and not more than four thousand and six hundred and fifty-eight euro and seventy-five cents, or to both such fine and imprisonment. Provided that the punishment shall be increased by one degree where the offence is committed against any person mentioned in article 222 (1).'</p> <p>Article 251B of the Criminal Code: 'A person whose course of conduct causes another to fear that violence will be used against him or his property or against the person or property of any of his ascendants, descendants, brothers or sisters or any person mentioned in this article 221(1) shall be guilty of an offence if he knows or ought to know that this course of conduct will cause the other so to fear on each of those occasions, and shall be liable to the punishment of imprisonment for a term from three to six months or to a fine of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents and not more than eleven thousand and six hundred and forty-six euro and eighty-seven cents, or to both such fine and imprisonment.' Article 251C of the Criminal Code: 'in articles 251A and 251B references to harassing a person include alarming the person or causing the person distress.'</p>
The Netherlands ¹	'Belaging'	2000	<p>Article 285b of the Criminal Code: 'He who unlawfully, systematically, intentionally intrudes upon another person's privacy with the aim of forcing that person to do something, to refrain from doing something, to tolerate something or to instil fear in that person, is liable, as guilty of stalking, to a prison term with a maximum of three years or a fine of the fourth category. Prosecution can only occur on the complaint of the person against whom the crime was committed.'</p>
Poland	'Stalking'	2011	<p>Article 190a of the Criminal Code: '(1) He who by the persistent harassment of another person or a person's near ones raises in him a reasonable fear or significantly violates his privacy shall be liable to an imprisonment of up to 3 years. (2) He who, pretending to be another person, uses his image or other personal data in order to cause material or personal damage, shall be subjected to the same penalty. (3) If the act specified in § 1 or 2 results in a suicide attempt by the victim, the perpetrator is liable to an imprisonment of one to 10 years. (4) Prosecution of the crime specified in § 1 or 2 occurs at the request of the victim.'</p>
The United Kingdom	'Harassment' and 'putting people in fear of violence'	1997	<p>Protection from Harassment Act: Section 1: 'A person must not pursue a course of conduct (a) which amounts to harassment of another, and (b) which he knows or ought to know amounts to harassment of the other. For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.'</p> <p>Section 2: 'A person who pursues a course of conduct in breach of section 1 is guilty of an offence. A person guilty of an</p>

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			<p>offence under this section is liable on summary conviction to imprisonment for a term not exceeding six months, or a fine not exceeding level 5 on the standard scale, or both.' Section 4: 'A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence if he knows or ought to know that this course of conduct will cause the other so to fear on each of those occasions. For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion. A person guilty of an offence under this section is liable on conviction on indictment, to imprisonment for a term not exceeding five years, or a fine, or both, or on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.' Section 7: 'References to harassing a person include alarming the person of causing the person distress.'</p>
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¹ This legal definition was translated by the author (with the help of a native speaker).

² This translation was copied from De Fazio (2009).

³ This official translation can be found at http://www.gesetze-im-internet.de/englisch_stgb/englisch_stgb.html#StGBengl_000P238.

⁴ This translation combines the one from De Fazio (2009) with the one from the Feasibility study (2010).